

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Glenn Brown	Team: Team # 1	CCRB Case #: 201304829	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/26/2013 5:34 AM	Location of Incident: 335 East 111th Street	Precinct: 23	18 Mo. SOL 11/26/2014	EO SOL 11/26/2014	
Date/Time CV Reported Sun, 05/26/2013 12:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/03/2013 2:17 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Wheeler	16703	947606	023 PCT
2. POM Christopher Derco	14560	946917	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Derco	Force: PO Christopher Derco used physical force against § 87(2)(b)	
B.POM David Wheeler	Force: PO David Wheeler used physical force against § 87(2)(b)	

### Case Summary

On May 26, 2013, Sgt. Joseph Hartnett reported a prisoner injured in police custody to the Internal Affairs Bureau. On June 3, 2013, the CCRB received this complaint via IAB log #13-22897.

On May 26, 2013, at approximately 5:34 am, § 87(2)(b) was apprehended by PO Christopher Derco and PO David Wheeler of the 23<sup>rd</sup> Precinct in front of 335 East 111<sup>th</sup> Street in Manhattan and the following allegations resulted:

- **Allegation A) Force: PO Christopher Derco used physical force against § 87(2)(b)**
  - **Allegation B) Force: PO David Wheeler used physical force against § 87(2)(b)**
- § 87(2)(g)

### Results of Investigation

#### Civilian Statements

**Complainant/ Victim:** § 87(2)(b)

- *At the time of the incident, § 87(2)(b) was § 87(2)(b) old. He is a black male, 5'11" tall, 190 pounds, with black hair and brown eyes.* § 87(2)(b)

**Arrest Photograph:** (encl. B7)

§ 87(2)(b)'s arrest photograph shows a raw abrasion to the left side of his face.

**Statements Made to Medical Personnel:**

On § 87(2)(b), § 87(2)(b) was transported from the 23<sup>rd</sup> Precinct stationhouse to § 87(2)(b) by an FDNY EMT. On the Prehospital Care Report § 87(2)(b) is reported to have said that he was kicked in the face while resisting arrest and fighting with police officers.

When § 87(2)(b) was seen by doctors at § 87(2)(b) at approximately § 87(2)(b) he reported that he had been "stomped" on the right side of his face and on his right ear by police officers. § 87(2)(b) also reported that he was pressed against a "concrete floor." At § 87(2)(b) § 87(2)(b) told a doctor that he was assaulted by another man on the street who drew a knife on him, which prompted him to flee. § 87(2)(b) stated that he was surprised that he was charged with robbery, but asked to see a judge so that he could be arraigned and legal proceedings could begin. When § 87(2)(b) was cleared for release from the hospital he alleged once more that police officers were responsible for the injury to his face.

**CCRB Statement:** (encl. B4-6)

On July 19, 2013, § 87(2)(b) was interviewed at § 87(2)(b). On May 26, 2013, at approximately 4:30 am, § 87(2)(b) left a friend's house on 130<sup>th</sup> Street in Manhattan and headed down to another friend's house at § 87(2)(b) § 87(2)(b). § 87(2)(b) discovered that this friend was not home so he decided to "take a walk." § 87(2)(b) walked westbound on the northern side of 110<sup>th</sup> Street, listening to his portable music player. After stopping at § 87(2)(b) § 87(2)(b), § 87(2)(b) did not meet any friends or enter any stores. § 87(2)(b)

§ 87(2)(b) was wearing sneakers, jeans, a gray-blue thermal shirt, an army jacket, and a black and orange San Francisco Giants baseball cap. After about an hour of walking around, at approximately 5:00 am, § 87(2)(b) was walking on East 111<sup>th</sup> Street in front of an individual known to the investigation as § 87(2)(b) described as a Mexican male, who § 87(2)(b) felt was walking too closely behind him. § 87(2)(b) turned around and told § 87(2)(b) “Excuse me sir, why you all up on me?” § 87(2)(b) groaned at § 87(2)(b) and then spit on § 87(2)(b) s leg. § 87(2)(b) then swung a punch at § 87(2)(b) and the two men became embroiled in a physical altercation. § 87(2)(b) fell to the ground and then offered § 87(2)(b) money. § 87(2)(b) declined § 87(2)(b) s money and § 87(2)(b) pulled a knife out of his backpack. § 87(2)(b) hurried away from § 87(2)(b) and turned southbound onto 2<sup>nd</sup> Avenue.

Approximately five to ten minutes later, § 87(2)(b) found himself in the vicinity of 112<sup>th</sup> Street and 2<sup>nd</sup> Avenue, when a marked police vehicle that did not have its turret lights activated stopped in the middle of the road. PO David Wheeler, described as a uniformed white male officer, 6’2”-6’3” tall, 180 pounds, with short blond hair and approximately 26- to 27-years-old, exited the driver’s seat of the police vehicle and said, “Stop. You almost got shot.” § 87(2)(b) immediately put his hands in the air and kneeled down on the street. § 87(2)(b) asked why he had been stopped and PO Wheeler told him, “A call has been made on you.” PO Wheeler walked behind § 87(2)(b) and handcuffed him. § 87(2)(b) did not resist PO Wheeler’s attempt to place him in handcuffs. PO Wheeler then pushed § 87(2)(b) on the back and § 87(2)(b) fell down onto his chest. PO Christopher Derco, described as a uniformed white male, 5’6” tall, 200 pounds with short blond hair, and a chubby-build, exited the passenger side of the police vehicle and walked over to § 87(2)(b) who was lying prone on the street. PO Wheeler had stepped away from § 87(2)(b) approximately two to three feet towards the hood of the police vehicle and was holding some paper in his hands at the time that PO Derco approached § 87(2)(b). Also at this time, an unknown number of officers walked towards the police vehicle next to which PO Wheeler was standing. Approximately 15 seconds after PO Wheeler had handcuffed § 87(2)(b) PO Derco kicked § 87(2)(b) on the left side of his face one time. PO Derco then used the bottom of his foot to stomp on § 87(2)(b) s lower back numerous times. § 87(2)(b) stated that these stomps were not deployed to provide sustained pressure on his back in order to hold him on the ground, but instead were a series of stomps that were intended to hurt him. PO Derco then lifted § 87(2)(b) up by the back of his jacket and stood him on his feet. § 87(2)(b) was then placed into the police vehicle by PO Derco and driven to the 23<sup>rd</sup> Precinct stationhouse where he was charged with robbery.

§ 87(2)(b) did not have any stolen money or a stolen cell phone on his person at the time of his arrest.

**Witness:** § 87(2)(b)

- *At the time of the incident, § 87(2)(b) was § 87(2)(b) old. He is a Hispanic male, 5’8” tall, 123 pounds, with black hair and black eyes.* § 87(2)(b)

**CCRB Statement:** (encl. B8-11)

On August 8, 2013, § 87(2)(b) was interviewed in his apartment, which is located at § 87(2)(b) § 87(2)(b), in Manhattan. § 87(2)(b) s statement was translated on location from Spanish to English. On May 26, 2013, at approximately 5:34 am, § 87(2)(b) was walking to work down the middle of East 110<sup>th</sup> Street between 2<sup>nd</sup> and 3<sup>rd</sup> Avenue, when he was suddenly grabbed around the neck from behind and brought to the ground by an individual described as a brown male with dreadlocks, approximately 20- to 22-years-old, and known to the investigation

as § 87(2)(b) § 87(2)(b) turned around, saw § 87(2)(b) and § 87(2)(b) asked § 87(2)(b) for money. § 87(2)(b) did not observe any injuries on § 87(2)(b)'s face at this time. § 87(2)(b) punched § 87(2)(b) and § 87(2)(b) kicked § 87(2)(b). § 87(2)(b) did not injure § 87(2)(b) when he kicked him. § 87(2)(b)'s cellular telephone fell off of his person and as § 87(2)(b) picked up the phone, § 87(2)(b) got up off the ground. § 87(2)(b) struck § 87(2)(b) again and asked § 87(2)(b) several more times for money. § 87(2)(b) told § 87(2)(b) "It's okay," and opened his backpack to feign that he was going to produce some money to give to § 87(2)(b). Instead, § 87(2)(b) took a box cutter out of his bag and, in response, § 87(2)(b) ran across the street. § 87(2)(b) pursued § 87(2)(b) across the street and § 87(2)(b) ran further away. § 87(2)(b) eventually caught up with § 87(2)(b) and § 87(2)(b) handed § 87(2)(b) back his phone. § 87(2)(b) and § 87(2)(b) then walked off in different directions. § 87(2)(b) promptly called 911 on his cell phone to report the robbery.

By this time, § 87(2)(b) was walking northbound along 2<sup>nd</sup> Avenue and when he reached the intersection of 2<sup>nd</sup> Avenue and 112<sup>th</sup> Street, § 87(2)(b) saw § 87(2)(b) again, this time at the intersection of 111<sup>th</sup> Street and 2<sup>nd</sup> Avenue. § 87(2)(b) called 911 again to report § 87(2)(b)'s location and then pursued § 87(2)(b) down 2<sup>nd</sup> Avenue and then westbound along 111<sup>th</sup> Street towards 1<sup>st</sup> Avenue. The 911 operator told § 87(2)(b) not to follow § 87(2)(b) but § 87(2)(b) ignored these instructions. When § 87(2)(b) reached 1<sup>st</sup> Avenue, he turned southbound along 1<sup>st</sup> Avenue and § 87(2)(b) continued to pursue him. At the corner of 110<sup>th</sup> Street and 1<sup>st</sup> Avenue, a marked police vehicle with its turret lights activated pulled up and stopped § 87(2)(b) on East 110<sup>th</sup> Street. The police vehicle stopped approximately 15 meters from the intersection with 1<sup>st</sup> Avenue. PO Wheeler, described as a uniformed white male, 6'2" tall, skinny build, 38-years-old, with dark hair, and PO Derco, described as a uniformed white male, shorter than PO Wheeler, 40-years-old, with black hair and an average build, exited the police vehicle and § 87(2)(b) stepped into the street towards the police vehicle in order to speak with the officers at the rear of the RMP. When PO Wheeler and PO Derco exited the RMP, § 87(2)(b) stopped running towards § 87(2)(b) and started walking towards the police vehicle from approximately 10 meters away. § 87(2)(b) did not know what, if anything, § 87(2)(b) and the officers were discussing. By the time § 87(2)(b) had reached the RMP, § 87(2)(b) was facing the rear of the RMP with his hands behind his back as if he was about to be handcuffed and § 87(2)(b) shouted, "Hey!" to the officers. § 87(2)(b) was not sure if this shout alerted § 87(2)(b) to § 87(2)(b)'s presence, but after § 87(2)(b) shouted, § 87(2)(b) took off running north along 1<sup>st</sup> Avenue.

§ 87(2)(b) and PO Wheeler ran after § 87(2)(b) along 1<sup>st</sup> Avenue. PO Derco got back into the police vehicle in order to pursue § 87(2)(b) by car. As § 87(2)(b) was chasing after § 87(2)(b), § 87(2)(b) attempted to kick § 87(2)(b)'s feet as he fled so that § 87(2)(b) might fall down, but § 87(2)(b) managed to stay on his feet.

Soon, PO Wheeler overtook § 87(2)(b) and got closer to § 87(2)(b). § 87(2)(b) turned left, headed westbound on 111<sup>th</sup> Street and PO Wheeler continued chasing after him. § 87(2)(b) slowed down to a walk near the corner of 1<sup>st</sup> Avenue and 111<sup>th</sup> Street. On 111<sup>th</sup> Street about halfway between 1<sup>st</sup> and 2<sup>nd</sup> Avenue, PO Wheeler caught up with § 87(2)(b) and together PO Wheeler and § 87(2)(b) fell down to the ground together. § 87(2)(b) did not see what part of § 87(2)(b)'s body that PO Wheeler grabbed because PO Wheeler, who was behind § 87(2)(b), blocked § 87(2)(b)'s view of their interaction. § 87(2)(b) could not see what part of § 87(2)(b)'s body first landed on the ground for the same reason. PO Wheeler landed on top of § 87(2)(b) and § 87(2)(b) struggled against PO Wheeler, trying to escape. PO Wheeler pulled § 87(2)(b)'s hands behind his back and § 87(2)(b) continued to struggle with PO Wheeler, moving his arms and his shoulders back and forth. Within seconds of § 87(2)(b) and PO Wheeler falling to the ground, approximately three additional police vehicles arrived on the scene. Approximately five officers exited these vehicles and § 87(2)(b) stopped struggling against PO Wheeler's

attempts to place him in handcuffs. After § 87(2)(b) was in handcuffs, § 87(2)(b) arrived at the location of § 87(2)(b)'s apprehension. § 87(2)(b) did not see any injuries on § 87(2)(b). § 87(2)(b) did not see any of the officers strike § 87(2)(b). § 87(2)(b) was brought to a stationhouse in order to provide a statement.

### **NYPD Statements:**

#### **Subject Officer: OFFICER DAVID WHEELER**

- *At the time of the incident, PO Wheeler was § 87(2)(b) old. He is a white male, 6'4" tall, 200 pounds, with blond hair and blue eyes.*
- *On May 26, 2013, PO Wheeler worked from 11:15 pm to 7:50 am, was assigned to Patrol Sectors E and H, was working with PO Derco, was dressed in uniform, and was assigned to a marked police vehicle, RMP #3915.*

#### **Memo Book:** (encl. C1-4)

On May 26, 2013, PO Wheeler noted in his memo book that at 4:57 am he was performing a directed patrol at East 110<sup>th</sup> Street and Lexington Avenue. At 5:10 am, PO Wheeler received a notification of a larceny of a cell phone in progress at East 111<sup>th</sup> Street and 1<sup>st</sup> Avenue. At 5:12 am, PO Wheeler noted that he had stopped one male in regards to the larceny. This male fled the arresting officer, headed north on East 110<sup>th</sup> Street and 1<sup>st</sup> Avenue to a location in front of 335 East 111<sup>th</sup> Street. At 5:34 am, § 87(2)(b) (DOB: § 87(2)(b)) was placed under arrest in front of 335 East 111<sup>th</sup> Street for § 87(2)(b).

#### **Arrest Report:** (encl. C7-9)

On May 26, 2013, at approximately 5:34 am, PO Wheeler arrested § 87(2)(b) opposite 335 East 111<sup>th</sup> Street in Manhattan. The arrest report narrative states that § 87(2)(b) stated that § 87(2)(b) used physical force to unlawfully take his cell phone. § 87(2)(b) was charged with § 87(2)(b). At the time of his arrest, § 87(2)(b) was wearing a green coat, a black baseball hat, and orange sneakers.

#### **CCRB Statement:** (encl. C10-12)

On December 11, 2013, PO Wheeler was interviewed at the CCRB. On May 26, 2013, at approximately 5:34 am, PO Wheeler was driving a marked police vehicle eastbound on East 110<sup>th</sup> Street between 2<sup>nd</sup> Avenue and 1<sup>st</sup> Avenue in Manhattan when a call came over the radio stating that a robbery had just been committed in the area. The radio run also provided a detailed description of the perpetrator; however, PO Wheeler no longer recalled what specifically that description was. Soon after the description went over the radio, PO Wheeler observed § 87(2)(b) who closely matched the description that had just been broadcast over the radio, walking on the northern sidewalk of East 110<sup>th</sup> Street. § 87(2)(b) stepped off the sidewalk and started to cross behind the moving police vehicle when PO Wheeler stopped the vehicle. PO Wheeler exited the driver's side door and instructed § 87(2)(b) who was approximately 15 feet away from PO Wheeler, to stop and come to the back of the police vehicle. § 87(2)(b) did not respond, but complied and walked over to the back of the police vehicle. PO Wheeler speculated that he or PO Derco, who had exited the passenger's side of the police vehicle, instructed § 87(2)(b) to put his hands onto the trunk of the vehicle and asked him if he had any weapons on him. § 87(2)(b) placed his hands onto the trunk of the vehicle while PO Wheeler stood behind § 87(2)(b) and to his left and PO Derco stood behind § 87(2)(b) and to his right. PO Wheeler

did not consider § 87(2)(b) to be free to go at this time because they wanted to secure him and wait for the victim of the robbery, § 87(2)(b) to come to the location and determine whether § 87(2)(b) had been his assailant. Simultaneous to § 87(2)(b) placing his hands on the back of the vehicle, § 87(2)(b) was walking from 1<sup>st</sup> Avenue, westbound down East 110<sup>th</sup> Street towards the officers, pointing at § 87(2)(b) as if to say, “That guy. That guy.”

PO Wheeler and PO Derco started to place § 87(2)(b) into handcuffs and suddenly § 87(2)(b) pushed PO Derco to his right and onto the ground and then started running towards the northern sidewalk. PO Wheeler speculated that § 87(2)(b) fled because he saw § 87(2)(b) coming towards the police vehicle, identifying him as the perpetrator of the robbery. PO Wheeler had § 87(2)(b)'s left arm in his hand when he started running, but § 87(2)(b) managed to pull his arm out of PO Wheeler's grasp. § 87(2)(b) took off running eastbound along the sidewalk towards 1<sup>st</sup> Avenue and § 87(2)(b) attempted to trip § 87(2)(b) but failed. § 87(2)(b) started to run after § 87(2)(b) and for a brief moment § 87(2)(b) was between PO Wheeler and § 87(2)(b). PO Wheeler quickly overtook § 87(2)(b) and when § 87(2)(b) turned left, running northbound on 1<sup>st</sup> Avenue, PO Wheeler followed behind him. § 87(2)(b) made another left at the next block, this time heading westbound on the southern sidewalk of East 111<sup>th</sup> Street. PO Wheeler did not issue § 87(2)(b) any commands while he chased after him, but he did make several reports over the radio regarding the changing direction of his flight. PO Derco got into the driver's seat of the police vehicle and pursued § 87(2)(b) in the vehicle.

PO Derco overtook § 87(2)(b) in the vehicle on East 111<sup>th</sup> Street and then exited the police vehicle. PO Derco ran towards § 87(2)(b) and grabbed § 87(2)(b) with both arms around his upper body. PO Wheeler did not recall how § 87(2)(b) reacted physically to being grabbed by PO Derco, nor did he recall exactly what § 87(2)(b) did moments prior to PO Derco grabbing him. PO Wheeler was approximately 10 yards away from § 87(2)(b) when PO Derco grabbed him, though he was closing in at a fast rate. PO Wheeler caught up with PO Derco and § 87(2)(b) and the speed with which he ran into § 87(2)(b) and PO Derco caused all three men to fall down onto the sidewalk. The front of § 87(2)(b)'s body hit the ground. Once § 87(2)(b) was on the ground, either PO Derco or PO Wheeler (PO Wheeler could recall who) took out their handcuffs and promptly placed § 87(2)(b) into handcuffs. Once § 87(2)(b) was on the ground, he was compliant with the officers' attempt to place him into handcuffs and the handcuffs were applied without any difficulty.

While § 87(2)(b) was on the ground, neither PO Derco nor PO Wheeler kicked § 87(2)(b) in the face or stomp § 87(2)(b) on the back. None of the other officers who arrived on the scene kicked § 87(2)(b).

Very soon after § 87(2)(b) was handcuffed, many other officers arrived, as well as § 87(2)(b) and § 87(2)(b) was placed into one of them and transported back to the stationhouse. § 87(2)(b) did not have § 87(2)(b)'s cell phone on him because prior to the officers' apprehending § 87(2)(b) had chased § 87(2)(b) and retrieved his cell phone from him.

PO Wheeler was presented with § 87(2)(b)'s arrest photograph and said that the injury that § 87(2)(b) sustained to the left side of his face “most likely” happened when § 87(2)(b) fell onto the ground because he was not able to brace himself for the impact on account of the officers' restraint of his arms and upper body.

**Subject Officer: OFFICER CHRISTOPHER DERCO**

- *At the time of the incident, PO Derco was § 87(2)(b) old. He is a white male, 5'6" tall, 185 pounds, with brown hair and green eyes.*

- On May 26, 2013, PO Derco worked from 11:15 pm to 7:50 am, was assigned to Patrol Sector EH with PO Wheeler, was dressed in uniform and was assigned to a marked sedan, RMP #3915.

**Memo Book:** (encl. C13-14)

On May 26, 2013, PO Derco noted in his memo book that at 5:20 am, he backed Sector D on a larceny of a cell phone in progress. A black male wearing orange sneakers and a green jacket was the suspect. At 5:22 am, PO Derco observed a male that fit the description of the larceny suspect. As PO Wheeler and he attempted to detain the perpetrator, he pushed PO Wheeler and PO Derco, which caused PO Derco to fall to the ground and hurt his right knee. PO Wheeler pursued on foot and PO Derco followed in the car. The perpetrator was apprehended at 111<sup>th</sup> Street between 1<sup>st</sup> Avenue and 2<sup>nd</sup> Avenue. The perpetrator resisted arrest. At 5:40 am, PO Derco noted that he was at the stationhouse for arrest processing.

**CCRB Statement:** (encl. C15-17)

On January 31, 2014, PO Derco was interviewed at the CCRB. § 87(2)(g)

After § 87(2)(b) was stopped, PO Derco grabbed § 87(2)(b)'s right hand and PO Wheeler grabbed § 87(2)(b)'s left hand in order to place him into handcuffs. § 87(2)(b) "tensed up," pulled his hands in front of his chest and then turned his body in a way that forced PO Derco onto the ground. PO Derco fell onto his right knee. Simultaneously, § 87(2)(b) pushed PO Wheeler, freeing his hand from PO Wheeler's grip, and started running eastbound, towards 1<sup>st</sup> Avenue. PO Wheeler immediately chased after § 87(2)(b) and when § 87(2)(b) turned left onto 1<sup>st</sup> Avenue, PO Wheeler followed behind.

PO Derco got into the driver's seat of the police vehicle and pursued § 87(2)(b). PO Derco overtook § 87(2)(b), exited the vehicle, said, "Stop running," and ran into § 87(2)(b) at a right angle on the sidewalk. Immediately after § 87(2)(b) ran into PO Derco, PO Wheeler caught up from behind § 87(2)(b) and collided with PO Derco and § 87(2)(b). PO Wheeler, and PO Derco all fell down onto the sidewalk. PO Derco did not recall exactly why § 87(2)(b) fell down, but attributed it largely to the speed with which he was running when he ran into § 87(2)(b).

After he had fallen, § 87(2)(b) was laying on his chest on the sidewalk with his arms at his sides. PO Derco and PO Wheeler each grabbed one of § 87(2)(b)'s arms and § 87(2)(b) "tensed up" again, trying to prevent the officers from moving his arms behind his back so that he could be handcuffed. PO Derco said, "Give me your hands." § 87(2)(b) was also moving his head around while he was on the ground. PO Derco and PO Wheeler successfully placed § 87(2)(b)'s hands behind his back and placed him into handcuffs.

Once § 87(2)(b) was in handcuffs, PO Derco observed a scrape on § 87(2)(b)'s face. PO Derco speculated that § 87(2)(b) received this scrape when he fell to the ground or while he was moving his head side-to-side while he was on the ground. Neither PO Derco nor PO Wheeler kicked § 87(2)(b) in the face. Neither PO Derco nor PO Wheeler stomped on § 87(2)(b)'s back. Shortly after § 87(2)(b) was in handcuffs, approximately two to three other police vehicles arrived on the scene in response to PO Wheeler's radio transmission about his foot pursuit.

§ 87(2)(b) was brought back to the stationhouse where he once again identified § 87(2)(b) as the individual who had robbed him.

**Medical Records**

§ 87(2)(b)'s FDNY Prehospital Care Report, which was prepared on May 26, 2013, stated that § 87(2)(b) had a one inch by one inch abrasion on his mid-left cheek and swelling on the

right side of his mouth. The report also noted that § 87(2)(b) had an unsteady gait and that he had consumed alcohol prior to receiving treatment.

§ 87(2)(b)'s medical records from § 87(2)(b) also state that § 87(2)(b) had an abrasion, or friction burn, to the left side of his face and scratches on his neck. § 87(2)(b) reported consuming a half liter of liquor on the date of the incident. At § 87(2)(b) § 87(2)(b) was discharged from the hospital with a 2 mg dose of Risperdal, an antipsychotic used to treat schizophrenia and bipolar disorder.

### **NYPD Documents**

#### **Medical Treatment of Prisoner Report:** (encl. D1)

On May 26, 2013, PO Damaris Malave prepared a medical treatment of prisoner report for § 87(2)(b). The report noted that § 87(2)(b) was transported to § 87(2)(b) at § 87(2)(b) by ambulance in order to receive treatment for an injury that is described once as a "laceration" to his face and then later on the same piece of paper as an "abrasion" to the left side of his face. § 87(2)(b) was ultimately medically cleared for arraignment.

### **Arrest for Incident and Disposition**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 14, 2014 with regard to the incident (encl. E6).

### **Civilian's Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian's CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (encl. A3).

### **Subject Officers' CCRB History**

- PO David Wheeler has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. A1).
- PO Christopher Derco has been a member of the service for five years and there are three substantiated CCRB allegations against him (encl. A2-3):
  - In CCRB case number 201003003, PO Derco had one allegation of abuse of authority (a retaliatory summons) substantiated against him. The CCRB recommended that charges be brought against him and the NYPD penalized him with instructions.
  - In CCRB case number 201104579, PO Derco had two allegations of abuse of authority (a stop and a frisk) substantiated against him. The CCRB recommended that he receive



command discipline; however, the NYPD did not penalize PO Derco because the investigation exceeded its statute of limitations.

## Conclusion

### Identification of Subject Officers

Both PO Wheeler and PO Derco acknowledged participating in this incident.

### Investigative Findings and Recommendations

- **Allegation A) Force: PO Christopher Derco used physical force against § 87(2)(b)**
- **Allegation B) Force: PO David Wheeler used physical force against § 87(2)(b)**  
§ 87(2)(b) alleged that it was he, not § 87(2)(b) who was the victim of an attempted robbery. And yet, § 87(2)(b) stated, PO Wheeler and PO Derco stopped him on the street and informed him that he had been reported as having engaged in an unspecified criminal act. § 87(2)(b) stated that in response he compliantly kneeled down, placed his hands behind his back so that PO Wheeler could handcuff him, and then once he was in handcuffs, PO Wheeler pushed him down onto his chest. While he was in this position, lying prone on the street, PO Derco kicked him once on the left side of his face and stomped on his back numerous times.

PO Wheeler, PO Derco, and § 87(2)(b) provided a different version of events, one in which all three of them consistently stated that it was § 87(2)(b) who robbed § 87(2)(b) and was then stopped briefly by PO Derco and PO Wheeler before he fled on foot. When § 87(2)(b) was finally apprehended by the officers, PO Derco and PO Wheeler both stated that it was in the midst of a high-speed foot pursuit that ended with § 87(2)(b) being brought to the ground when PO Derco grabbed him around the upper-body and PO Wheeler collided into them, sending the three men tumbling onto the ground. § 87(2)(b) did not say that PO Derco assisted PO Wheeler in halting § 87(2)(b)'s flight, and instead stated that PO Wheeler acted alone in bringing § 87(2)(b) to the ground. PO Wheeler stated that once § 87(2)(b) was on the ground, the officers did not have any difficulty placing him into handcuffs. PO Derco stated that § 87(2)(b) initially did not easily provide his hands to the officers and that he moved his head from side to side while he was lying face-down on the sidewalk. Both officers denied kicking § 87(2)(b) in the face or stomping on his back and § 87(2)(b) stated that he did not see either any officer strike § 87(2)(b). Neither officer was certain how § 87(2)(b) sustained the injury to his left cheek, but both speculated that it happened when he fell to the ground.

Patrol Guide Procedure 203-11 (encl. i-ii) affords officers the minimum necessary force to effect an arrest. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

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Team:   1  

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Supervisor: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date